



June 28, 2023

**VIA ECF**

The Honorable Louis L. Stanton  
Daniel Patrick Moynihan U.S. Courthouse  
500 Pearl St., New York, NY 10007-1312

Re: *Lynne Freeman v. Tracy Deebs-Elkenaney et. al.*, 1:22 Civ 02435 (LLS)(SN)

Dear Judge Stanton:

Defendants rest on their arguments as to why Plaintiff's manuscripts should be unsealed. (ECF No. 235.) We write only to address two misleading and prejudicial claims in footnotes in Plaintiff's July 27 letter regarding sealing. (ECF No. 240.)

In footnote 2 of her letter, Plaintiff argues that it would "mislead the public perception" to unseal only the two test versions of her manuscript, and that "if the public had access to all six manuscripts, the theft would be undeniable." (ECF No. 240 at 2 n.2.) This is false. Plaintiff admits that all the various versions of her manuscript are "a single story that has some revisions here and there." (6/2/23 Hr'g Tr. (ECF No. 222) 30:18-31:6; *see also* Reiss Rep. (ECF No. 205-2) ¶ 225 (all versions have the same "basic story, plot, characters").) While the two test versions that Plaintiff selected are all that is needed to adjudicate substantial similarity (and all that are allowed under the Court's Orders), any reasonable reader comparing the works themselves would see that the *Crave* series is not substantially similar to **any** version of *BMR*. If Plaintiff truly believes otherwise, she is welcome to file all six versions publicly on the docket.

In footnote 3, Plaintiff requests that "all previous unpublished versions of the books in the *Crave* book series" should be unsealed if filed in the future "in the interest in [sic] fairness." (ECF No. 240 at 3 n.3.) This issue is not ripe, but Defendants need to address it now to avoid prejudice from the false equivalency Plaintiff is attempting to create.

Plaintiff's unpublished manuscripts are directly at issue in this case, as they are the very subject of her copyright infringement claims. By contrast, prior drafts of books in the *Crave* series are **not** at issue. Plaintiff alleges in this case that the four published *Crave* books **themselves** infringed her copyrights, not prior drafts of these books. (First Am. Compl. (ECF No. 24) ¶ 76 (alleging that Defendants committed copyright infringement by "manufacturing, distributing and selling the books entitled *Crave*, *Crush*, *Covet*, and *Court* in various formats, each of which are substantially similar to the Freeman Copyrighted Material").) And substantial similarity will be adjudicated based on these final published *Crave* books, not prior drafts of them. *See, e.g., Sheldon Abend Revocable Tr. v. Spielberg*, 748 F. Supp. 2d 200, 204 & n.4 (S.D.N.Y. Sept. 21, 2010) (explaining that "[a] determination of copyright infringement requires a side-by-side comparison of the disputed works themselves" and that "earlier drafts of a book, manuscript, or screenplay are irrelevant").

Prior drafts of *Crave* books are confidential materials that were produced in discovery to comply with Plaintiff's document demands, and they are extremely sensitive. The leaking of unpublished rough drafts of popular books can be devastating to their authors, both because it shares the works in a rough, unfinished state that authors do not want the public to see, and because

it gives fans of the books free access to content that could potentially be used in later published works. See <https://www.publishersweekly.com/pw/by-topic/childrens/childrens-book-news/article/6648-meyer-s-midnight-sun-on-hold.html> (reporting how the unauthorized leaking of a *Twilight* rough draft caused author Stephenie Meyer severe prejudice and “to put the project on hold ‘indefinitely’”). Unlike Plaintiff’s manuscripts, prior drafts of *Crave* books are not on file with the Copyright Office and not publicly available. These prior drafts have no relevance to Plaintiff’s copyright claims and the public’s minimal interest (if any) in accessing them is greatly outweighed by Ms. Wolff’s interest in keeping her unpublished and unregistered rough drafts private.

Thank you for your time and attention to this matter.

Respectfully submitted,

By: /s/ Benjamin S. Halperin

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